

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAY A. EDDINGTON, #154212,

Petitioner,

v.

CASE NO. 05-CV-72508-DT
HONORABLE LAWRENCE P. ZATKOFF

STATE OF MICHIGAN,

Respondent.

OPINION AND ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS

This is a habeas case under 28 U.S.C. § 2254. Ray Anthony Eddington (“Petitioner”) is a state prisoner currently confined at the Charles Egeler Reception and Guidance Center Annex in Jackson, Michigan. Petitioner was convicted of assault with intent to murder and possession of a firearm during the commission of a felony following a bench trial in the Recorder’s Court for the City of Detroit (Wayne County Circuit Court) in 1992. He was sentenced as a fourth habitual offender to 250 to 500 months imprisonment on the assault conviction and a consecutive term of two years imprisonment on the felony firearm conviction.

Petitioner initially submitted two habeas petitions challenging his 1992 convictions. The cases have now been consolidated into the present action. In his combined pleadings, Petitioner raises claims concerning the sufficiency of the evidence, his jury trial waiver, the denial of his post-conviction motion seeking re-sentencing, the habitual offender proceedings, and the effectiveness of sentencing and appellate counsel. For the reasons set forth below, the Court dismisses without prejudice the petition for writ of habeas corpus.

II. Analysis

A prisoner filing a petition for a writ of habeas corpus under 28 U.S.C. §2254 must first exhaust all state remedies. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (“state prisoners must give the state courts one full fair opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review process”); *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir. 1994). A Michigan prisoner must raise each issue he seeks to present in a federal habeas proceeding to the state courts. Each issue must be presented to both the Michigan Court of Appeals and the Michigan Supreme Court to satisfy the exhaustion requirement. *See Welch v. Burke*, 49 F. Supp. 2d 992, 998 (E.D. Mich. 1999); *see also Hafley v. Sowders*, 902 F.2d 480, 483 (6th Cir. 1990). The burden is on the petitioner to prove exhaustion. *Rust*, 17 F.3d at 160.

Petitioner has not met his burden of demonstrating exhaustion of state court remedies. Petitioner admits that he did not raise his jury trial waiver claim in the Michigan courts.¹ Petitioner has available remedies in the Michigan courts which must be exhausted before proceeding in federal court. For example, he may file a motion for relief from judgment pursuant to Michigan Court Rule 6.500 with the trial court and pursue his claims through the state appellate courts as necessary.

Federal habeas law provides that a habeas petitioner is only entitled to relief if he can show that the state court adjudication of his claims resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States. *See* 28 U.S.C. § 2254(d). If this Court were to review the claims presented, such an action would deny the state courts the deference to which they are entitled under 28 U.S.C. § 2254. The state courts must first be given a fair opportunity to rule upon all of Petitioner’s claims

¹It is unclear whether Petitioner properly exhausted his ineffective assistance of counsel claims in the state courts. Submission of claims to state’s highest court on discretionary review does not constitute “fair presentation” when such review is granted only upon “special and important reasons.” *Castille v. Peoples*, 489 U.S. 346, 349 (1989).

before he can present those claims to this Court. Otherwise, the Court is unable to apply the standard found at 28 U.S.C. § 2254.

III. Conclusion

For the reasons stated, the Court concludes that Petitioner has not fully exhausted his state court remedies. Accordingly, the Court **DISMISSES WITHOUT PREJUDICE** the petition for writ of habeas corpus. The Court makes no determination as to the merits or timeliness of Petitioner's claims.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: July 25, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on July 25, 2006.

s/Marie E. Verlinde

Case Manager
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